MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022 / 2023 (TERM ID 2210)

UIS 4612 – LAW OF INSOLVENCY

(All Sections / Groups)

06 FEBRUARY 2023
Reading Time: 9.00 a.m. – 9.15 a.m.(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Insolvency Act 1967; (ii) Insolvency Rules 2017; (iii) Insolvency Voluntary Arrangement Rules 2017; (iv) Companies Act 2016; (v) Companies (Winding-up Rules 1972 (incorporating latest amendments); (vi) Companies (Corporate Rescue Mechanism) Rules 2018 and (vii) Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provide

QUESTION 1

Diana is a trained chef and decides to open up a restaurant called Enak under her company called Food Gods Sdn Bhd ("the Company").

The restaurant is thriving very well. One day, Diana's classmate from school, Anna visits Enak. She loves the food so much that she persuades Diana to open a restaurant in Johore. Anna says that she will look after the restaurant and she can assist Diana to manage the Company.

Upon arrangement with Diana, Anne and her husband managed to open another five new restaurants in Johore alone. However, Anne and her husband needed some money for operation expenditure for the Johore restaurants. The Company borrowed RM150,000 from Bank of United Nations ('BUN'). As a security for the loan, Diana and Anne stood in as a personal guarantor. Both of them signed the letter of guarantee to BUN.

Initially, the Company made regular repayments to BUN. However, recently Johore was hit by Corona virus Covid-19 pandemic and the state government of Johore required all the restaurants to shut down for few months and as a result, the business in Johore has declined.

The Company could not keep up the repayments to BUN. It defaulted the monthly instalments. BUN sent a demand to Diana and Anne and demanded that they, as guarantor, pay all outstanding sums to BUN.

On 14 April 2020, BUN, via their solicitors issued a letter of demand to the Company stating that a sum of RM150,000 was outstanding from the Company. Diana and Anne paid no attention to the said letter of demand. Meanwhile, BUN also sued Diana and Anne as guarantors. It obtained judgement against Diana and Anne. The judgement states that Diana and Anne,

"... *shall pay the judgement sum of RM150,000 to Bank of United Nations, interest at the rate of 5.00% per annum on the judgement sum until full satisfaction, and that the legal costs payable to the bank are to be assessed.*"

On 30 June 2022, BUN served bankruptcy notices on Diana and Anne. The bankruptcy notices demanded that Diana and Anne pay to BUN, a sum of RM150,000, plus costs and interest at 5.00% per annum and continuing. When BUN demanded payment of the outstanding sum of RM150,000 from the Company and commenced the winding up proceedings against them, the Company argued that only RM100,000 was due and that BUN's calculation of interest was erroneous and they have a total of fixed assets worth market value of RM500,000.

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Analyse the following:

(a) How could the Company oppose the winding-up petition by BUN?

(13 marks)

(b) Whether the bankruptcy notices against Diana and Anne were valid and the course of action open to them.

(12 marks)

(Total: 25 marks)

QUESTION 2

On 15.2.2022, Mariam obtained judgment against Sandy in the Sessions Court at Jalan Duta for a sum of RM250,000 with interest at 5% per annum from the date of judgement to date of realisation and costs of RM5,000.

After one month, Mariam demanded from Sandy payment of the full sum under the said judgement. After numerous demands from Mariam, Sandy paid a sum of RM100,000 towards the judgement sum. Mariam accepted the sum of RM100,000 as part payment of the judgement sum. After this payment, Sandy did not pay any money to Mariam despite numerous reminders by Mariam via her solicitors.

On 15.6.2022, Mariam issued a bankruptcy notice on Sandy. The bankruptcy notice stated that Sandy must pay Mariam the sum of RM150,000 with interest at 5% per annum from the date of judgment to date of realisation and costs of RM10,000 within seven days after the service of the bankruptcy notice on Sandy. The total interest calculated is RM5,000 only.

The dispatch of the Mariam's solicitors, namely Rajoo reached Sandy's last known address but Sandy was not in the house. Thus, Rajoo dropped the bankruptcy notice into the letter box of Sandy's house.

On 15.8.2022, Mariam served on Sandy a creditor's petition together with a supporting affidavit. Mariam's creditor's petition was dated 2.8.2022 while the affidavit in support of the creditor's petition was dated 1.8.2022. The creditor's petition was attested by a Solicitor from Kuching, Sarawak.

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The creditor's petition is fixed for hearing next month.

Sandy seeks your advice whether he has grounds to oppose the bankruptcy notice and creditor's petition and if so, the procedure to oppose the creditor's petition. Meanwhile, Sandy also informed you that he has a cross demand against Mariam for the sum of RM50,000.

Examine the grounds and the procedure Sandy should adopt in opposing the bankruptcy notice.

(Total: 25 marks)

QUESTION 3

Assess the case of Vijayalakshmi Devi Nadchatiram v Dr. Mahadevan Nadchatiram & Ors. [1995] 3 CLJ 493 by providing the facts of the said case and support by relevant legal principles including the statutory provisions from Companies Act 1965.

(25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Khan comes to you for advice. He was a pilot with Air Europe Sdn Bhd and was earning a hefty salary. With the allowances and benefits he received, he was able to lead a luxurious lifestyle. He had platinum credit card with Bank of United Nations ("BUN") and was able to make payments on time.

Unfortunately, due to the pandemic, Air Europe cancelled many flights and retrenched many employees. Khan was one of them. He was therefore unable to pay his credit card bills and is now facing the threat of bankruptcy.

Elucidate to Khan whether there is any avenue open to him to avoid bankruptcy under the Voluntary Arrangement under the Insolvency Act 1967.

(25 marks)

Or

QUESTION 4 (b)

Ayer Keroh Sdn Bhd is a company incorporated in Malaysia ("the Company"), running a gold investment business. Investors open gold investment accounts with them and authorise the Company to carry out transactions on their behalf. Unfortunately, the CEO of the Company misappropriated the funds and went missing. The Board of Directors decided to apply for a Scheme of Arrangement under Companies Act 2016 ("the Act").

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The investors come to you with their predicament. They wish to know whether they could apply under Section 368 of the Act to intervene and set aside the Order granting the Scheme of Arrangement on the grounds that the application for the Scheme of Arrangement had not satisfied the pre-conditions in section 368(2) paras (c) and (d) of the CA 2016 at the time of obtaining the restraining order, and to appoint an independent approved liquidator under section 367 of the CA 2016 to assess the viability of the proposed Scheme.

Present to the investors with reference to the CA 2016 and cases on the viability of such an application.

(25 marks)

(TOTAL: 100 MARKS)

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